

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILLIP FOND,

Petitioner,

v.

RALPH DIAZ,

Respondent.

No. 2:20-cv-1145 KJM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 21, 2021, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 21. Petitioner has filed objections to the findings and recommendations. ECF No. 24.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. The court writes separately here to address Mr. Fond's argument that this case is distinguishable from *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2015) (en banc). See Objections at 4–8.

1 In *Nettles*, the California Board of Parole Hearings had concluded the federal habeas  
2 petitioner was unsuitable for parole based in part on his history of prison discipline. *See id.* at  
3 926–27. He then challenged one of his rules violation reports in a federal petition for a writ of  
4 habeas corpus. *See id.* at 927. The district court dismissed the petition because expunging the  
5 challenged report was unlikely to lead to his earlier parole. *See id.* at 927. The Ninth Circuit  
6 upheld the dismissal. *See id.* at 934–35. The challenged rules violation report was only “one of  
7 the factors” among many the parole board could consider, so the petitioner’s success in federal  
8 court “could not necessarily lead to his immediate or even earlier release.” *Id.* For that reason,  
9 the petitioner’s claims were not “within ‘the core of habeas corpus’” and should instead have  
10 been brought in a civil action under 42 U.S.C. § 1983. *Id.* (quoting *Skinner v. Switzer*, 562 U.S.  
11 521, 535 n.13 (2011)).

12 The same is true here. Mr. Fond challenges a rules violation report after the denial of  
13 parole based in part on his history of discipline in the prison. *See, e.g.*, Objs. at 4 & Ex. 1. The  
14 challenged report was only one factor the Board of Parole Hearings considered. *See id.* Ex. 1 at  
15 3–4. Others included his criminal and parole history at the time of his offense; his impulsiveness,  
16 poor decisions, callousness, and lack of respect for the law; his expressions of views and  
17 behaviors that demonstrated no change in his behavior; and his history of violence and discipline  
18 in prison beyond the challenged report. *See id.* His success in this case would not necessarily  
19 lead to an earlier release. The Magistrate Judge concluded correctly that his petition must be  
20 dismissed.

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. The findings and recommendations filed April 21, 2021, ECF No. 21, are adopted in  
23 full;

24 2. Respondent’s motion to dismiss, ECF No. 12, is granted and petitioner’s application  
25 for writ of habeas corpus is dismissed for lack of jurisdiction;

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1           3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.  
2 § 2253; and

3           4. The Clerk of the Court is directed to close this case.

4 DATED: September 22, 2021.

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8 CHIEF UNITED STATES DISTRICT JUDGE  
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